

Thomas P. Infusino, Esq.

P.O. Box 792

Pine Grove, CA 95665

(209) 295-8866

[tomi@volcano.net](mailto:tomi@volcano.net)

10/18/13

California Department of Water Resources  
Division of Integrated Regional Water Management  
Financial Assistance Branch  
Post Office Box 942836  
Sacramento, CA 94236  
Attn: Ted Daum

[Theodore.Daum@water.ca.gov](mailto:Theodore.Daum@water.ca.gov)

(submitted by email)

Re: Please amend the IRWMP Draft Plan Review Procedures (DPRPs).

Dear Mr. Daum;

My name is Tom Infusino, and I am submitting these comments on behalf of the Calaveras Planning Coalition (CPC). I have a degree in planning from UC Davis, and a law degree from University of the Pacific. I have been involved in resource planning efforts in the Sierra for over 20 years.

I have served the CPC as an active member of the Regional Participants Committee (RPC) for the MAC IRWMP Update since October of 2011. In that context I have reviewed the IRWMPs of other regions as well. Prior to that, I commented on the “2010” Urban Water Management Plans of Amador Water Agency, Calaveras County Water District, and EBMUD.

The CPC is a group of community organizations and individuals who want a healthy and sustainable future for Calaveras County. We believe that public participation is critical to a successful planning process. United behind eleven land use and development principles, we seek to balance the conservation of local agricultural, natural and historic resources, with the need to provide jobs, housing, safety, and services.

While in general the DPRPs are good enough to identify many of our concerns regarding IRWMPs, our review below identifies some weaknesses in the Draft Plan Review Procedures, and recommends ways to remedy those deficiencies. We strongly encourage the Department of Water Resources to accept our proposed recommendations to help the state of California to strategically allocate scarce water supply and financial resources toward only the most worthy of water management efforts.

## **I . Analysis of DPRPs and Recommendations for improvements.**

### **A) An IRWMP must be given a failing grade if it fails to contain any single item mandated by state law.**

As proposed in the DPRPs, an IRWMP need only comply with 2 out of 3 parts of a standard to be found in compliance with the IRWMP Guidelines. However, the IRWMP Act, California Water Code, Sections 1530-10550, specify certain minimal items that absolutely must be in an IRWMP.

For example, California Water Code, Section 10540 states that:

*“(c)At a minimum, all plans shall address all of the following:*

*(1)Protection and improvement of water supply reliability, including identification of feasible agricultural and urban water use efficiency strategies.*

*(2)Identification and consideration of the drinking water quality of communities within the area of the plan.*

*(3)Protection and improvement of water quality within the area of the plan, consistent with the relevant basin plan.*

*(4)Identification of any significant threats to groundwater resources from overdrafting.*

*(5)Protection, restoration, and improvement of stewardship of aquatic, riparian, and watershed resources within the region.*

*(6)Protection of groundwater resources from contamination.*

*(7)Identification and consideration of the water-related needs of disadvantaged communities in the area within the boundaries of the plan.”*

In addition, California Water Code, Section 10541, regarding the IRWMP Guidelines, states that:

*“(e)The guidelines shall require that integrated regional water management plans include all of the following:*

*(1) Consideration of all of the resource management strategies identified in the California Water Plan, as updated by department Bulletin No. 160-2005 and future updates.*

*(2) Consideration of objectives in the appropriate basin plan or plans and strategies to meet applicable water quality standards.*

*(3) Description of the major water-related objectives and conflicts within a region.*

*(4) Measurable regional objectives and criteria for developing regional project priorities.*

*(5) An integrated, collaborative, multibenefit approach to selection and design of projects and programs.*

*(6) Identification and consideration of the water-related needs of disadvantaged communities in the area within the boundaries of the plan.*

*(7) Performance measures and monitoring to demonstrate progress toward meeting regional objectives.*

*(8) A plan for implementation and financing of identified projects and programs.*

*(9) Consideration of greenhouse gas emissions of identified programs and projects.*

*(10) Evaluation of the adaptability to climate change of water management systems in the region.*

*(11) Documentation of data and technical analyses used in the development of the plan.*

*(12) A process to disseminate data and information related to the development and implementation of the plan.*

*(13) A process to coordinate water management projects and activities of participating local agencies and local stakeholders to avoid conflicts and take advantage of efficiencies.”*

DWR staff cannot lawfully approve an IRWMP that fails to contain even **one** of these items mandated by state law. Furthermore, the fact that an IRWMP includes two or more other items does not outweigh its failure to include a mandatory item.

For example, California Water Code, Section 10541, subd. (e)(5), indicates that an IRWMP must include, “An integrated, collaborative, multibenefit approach to selection and design of projects and programs.” Thus, if the plans approach to the design and selection of projects was not collaborative, then it fails to meet the minimum standard. Such a plan must be given a failing grade.

However, the DPRPs list 12 different parts of the Governance Standard. (DPRP, p. 95.) Only one of those parts is “the collaborative process(es) used to establish plan objectives”. Thus, a

project could fail to have a collaborative process as required by state law, and still get a passing grade for the Governance Standard under the DPRP.

The same is true for the Objective Standard. The DPRP list five different parts of the Objective Standard, only one of which relates to “the collaborative process tools used to establish objectives.” (DPRP, p. 97.) Thus, a plan could fail to employ collaborative tools and still get a passing grade for its Objective Standard.

Finally, for the one part of the plan where collaboration is absolutely mandated, i.e. in project design and selection, the Project Review Process Standard, does not even include a single evaluation criterion related to providing collaborative process for project design and selection. (DPRP, p. 99.)

**Recommendation: We recommend that staff review the criteria in the DPRPs. Identify those criteria that directly relate to a legislative requirement for IRWMPs. Note that any plan that fails such a mandate will not get a passing grade. See Attachment 1 for our list of PRP criteria that reflect state mandates for IRWMPs.**

**Recommendation: We recommend that staff review the legislative mandates identified above for IRWMPs. If any mandate is not represented by a criterion in the PDRPs, DWR staff should add such a criterion to the PRPs. See Attachment 1 for our list of additional PRP criteria needed to comprehensively evaluate IRWMPs for compliance with state mandates.**

If DWR implements these two recommendations, then the PRPs will be effective tools to ensure DWR staff and the public can properly identify both adequate and substandard IRWMPs.

**B) Do not allow an IRWMP’s compliance with minor and procedural standards to outweigh its failure to meet major substantive requirements.**

In the DPRPs, each of the 16 IRWMP Standards is broken down into multiple parts. To pass the assessment, an IRWMP is required to comply with only two out of every three parts of the standard.

All parts of the standards are weighted the same, so complying with two easy administrative criteria (e.g. correctly identifying the name of the RWMG, and properly noticing the plan adoption meeting) is enough to outweigh failing to comply with one important substantive criterion (e.g. balanced access and opportunity to participate in the IRWMP process).

**Recommendation: We recommend that the easy and administrative criteria be considered separately from the important substantive criteria, so that compliance with the**

**administrative criteria will not be allowed to make up for non-compliance with substantive criteria. See Attachment 2 for our list of merely administrative criteria.**

**C) Please provide better notice to, and longer than 10 days for, the public to provide comments on IRWMPs submitted to DWR for review.**

The DPRPs provides only a 10-day public comment period once DWR's receipt of an IRWMP is posted on the DWR website. This is not a sufficient procedure for public review.

First, this procedure places an unnecessary burden on members of the public seeking to participate in DWR's review. Essentially, it requires anybody seeking to provide a comment on any IRWMP to check the DWR website every day to determine when an IRWMP has been submitted to DWR for review. That is hugely inefficient. That will impede the sort of public and stakeholder participation that is supposed to be a key component of the IRWMP process. (See IRWMP Final Guidelines 2012, pp. 62-63.)

**Recommendation: We recommend that when an RMG submits the IRWMP for DWR review, it should also be required to notify anybody who commented on the draft IRWMP of the opportunity to submit comments to DWR.**

Second, the review period is too short. Not all members of the public took the time to review the draft IRWMP. Even if they did, they may not have had the PRPs available at that time to use in their review. Thus, most people will be evaluating very lengthy IRWMPs, including numerous projects, against the new PRPs, for the very first time. Ten days is not enough time to do that. Furthermore, several IRWMPs may be submitted to DWR in the course of a few days. If review periods overlap, people will have even fewer than ten days to respond to DWR. When a voluminous draft EIR is submitted for public comment, the public gets 45 days to review it.

**Recommendation: We recommend that DWR provide commenters with 45 days to review the IRWMP and submit comments to DWR.**

**D) Please assess the degree to which the IRWMP Projects List implements statewide priorities, regional management strategies, and plan policies.**

It is not clear if the DPRPs will assess the degree to which the IRWMP Projects List implements statewide priorities, regional management strategies, and plan policies. In the end, a major goal of this "integrated" planning exercise is to identify and fund projects to achieve the entire range of plan priorities, strategies, and policies. (See IRWMP Final Guidelines 2012, pp. 40-49.) For example, if an IRWMP Projects List has many projects that meet the plan's water supply and

wastewater treatment provisions, and few projects that address the plan's water conservation, watershed management, and public recreation access provisions, DWR staff should point out this plan weakness. DWR staff should note this success or failure at this early plan review stage, so that regions understand the need to address this plan weakness prior to the Round 3 funding cycle.

**Recommendation: Review each IRWMP's Project List to determine if it is balanced in its implementation of statewide priorities, regional management strategies, and plan policies.**

**E) When feasible, please review the reliability and accuracy of the text of the IRWMPs.**

It is not clear from the DPRPs that DWR staff will assess the reliability or accuracy of the text of the IRWMP, based upon a review of the public comments. The IRWMP standards specify the need to base a plan on reliable information. (See IRWMP Final Guidelines, pp.55, 57-58.) Will DWR staff simply determine if an IRWMP standard is addressed and accept the information in the IRWMP as fact (a.k.a. "completeness review"), or will DWR staff look at the evidence provided by public commenters that disclose the unreliability statements in the IRWMP (a.k.a. "compliance review")?

**Recommendation: We strongly recommend that DWR assess the reliability and accuracy of the text of IRWMPs based upon public comments and other substantial evidence provided in the record.**

**1) California finances and natural resources will suffer if DWR staff does not critically review IRWMPs.**

While there are long-term statewide plans for water flows, for water infrastructure, and for riparian and estuarine habitat restoration, ultimately it takes local initiative, local financing, and local collaboration to implement these plans. By contrast, ill-conceived local water projects can impair California's ability manage water in the 21<sup>st</sup> century for the full spectrum of beneficial uses. The IRWMP process is designed to make water agencies, land use agencies, resource agencies, and concerned local organizations:

- (1) plan together for their futures based upon the best available data and analysis, to disclose theses future water plans to the state and to the public,
- (2) demonstrate that their future projects will promote state and regional management objectives while minimizing adverse impacts, and
- (3) identify responsible project implementation steps including design, financing, monitoring, reporting, and adaptive management

We thank you and your staff at DWR for your efforts in implementing the IRWMP process to date. However, we are greatly disappointed that so many regions have failed to do these plans well.

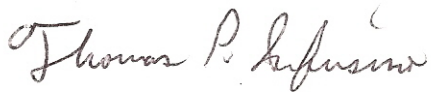
We realize that this planning process is critical. It is critical to lead California into a future when our precious water resources are managed for all beneficial uses. It is critical to stimulate local investment in water conservation, in water purification technologies, and in more efficient water distribution systems. It is critical to get urban water planners to look first at conservation and reclamation rather than always looking first to Sierra Nevada rivers and the Delta for another allocation of water. It is critical to guide limited state funds only to those regions and projects that are fully implementing state water law and policy to the best of their ability. Because we realize the critical nature of IRWMPs, we hope that you will join us in calling proper attention to failures of this water planning process.

**2) DWR must direct regions to correct their flawed IRWMPs.**

We understand that DWR is understaffed for the task of IRWMP review. We do not expect DWR to be able to give every IRWMP the level of scrutiny necessary to determine if every proposition set forth is supported by substantial evidence in the record. However, **when DWR receives a detailed investigation outlining the significant flaws in an UWMP, we do expect DWR to request that the region correct their deficient plan, and we do expect DWR to withhold any grant and loan funding pending those corrections. (CWC, Section 10546.)**

Thank you for the opportunity to submit these comments. **Please notify me when the final PRPs are available to the public.** We are looking forward to early review of our MAC IRWMP, so that our region will have the time to correct any plan deficiencies that might interfere with the Round 3 funding cycle.

Sincerely,

A handwritten signature in dark ink, reading "Thomas P. Infusino". The signature is written in a cursive, flowing style.

Thomas P. Infusino

## **Attachment 1: Mandated PRP Criteria**

### **1) Governance Standard:**

Public outreach involvement process – CWC, Sec.10541, subd. (g). (g).

Balanced access and opportunity to participate in the IRWM process – CWC, Section 10541, subd. (g).

The collaborative process used to make plan decisions - CWC, Sec.10541, subd (h).

### **2) Region Description Standard:**

Describe drinking water quality conditions – CWC, Sec. 10540, subd. (c)(2).

Describe major water-related objectives and conflicts – CWC, Sec. 10541, subd. (e)(3).

Please add all of the following:

Identify threats to groundwater resources from overdraft – CWC, Sec. 10440, subd. (c)(4).

Identify and consider the water related needs of disadvantaged communities in the plan region. – CWC, Secs. 10540, subd. (c)(7) & 10541, subd. (e)(6).

### **3) Objectives Standard:**

Identify quantitative or qualitative metrics and measurable objectives – CWC, Sec. 10541, subd. (e)(4).

Please add all of the following:

Protect and improve water supply reliability including through agricultural and urban water use efficiency – CWC Sec. 10540, subd. (c)(1).

Consider objectives in the appropriate basin plan and strategies to meet water quality standards – CWC, Secs. 10540, subd. (c)(3) & 10541, subd. (e)(2).

Protect, restore, and improve stewardship of aquatic, riparian, and watershed resources within the region – CWC Sec. 10540, subd. (c)(5).

Address protection of groundwater resources from contamination – CWC, Sec. 10540, subd. (c)(6).



4) Resource Management Strategies Standard:

Identify RMS incorporated into the IRWMP after consideration of all RMS criteria – CWC, Sec.10541, subd. (e)(1).

5) Project Review Process Standard:

Consider ghg emissions from programs and projects – CWC, Sec. 10541, subd. (e)(9).

Used a project selection and design process that was collaborative – CWC, Sec. 10541, subd. (e)(5).

Used a multibenefit approach to project design and selection – CWC, Sec. 10541, subd. (e)(5).

Used an integrated approach to project design and selection - CWC, Sec. 10541, subd. (e)(5).

6) Plan Performance and Monitoring Standard:

Contains performance standards and monitoring methods to ensure that IRWMP objectives are met – CWC, Sec. 10541, subd. (e)(7).

7) Data Management Standard:

Explain how data and information will be shared – CWC, Sec. 10541, subd. (e)(12).

8) Finance Standard:

Include a plan for financing projects and programs – CWC, Sec. 10541, subd. (e)(8).

9) Technical Analysis:

Document the data and technical analysis used development of the plan – CWC, Sec. 10541, subd. (e)(11).

10) Stakeholder Involvement:

A public process was used including public outreach and an opportunity to participate in the IRMW planning process – CWC, Sec. 10541, subd. (g).

The process facilitated stakeholder involvement regardless of ability to pay – CWC, Sec. 10541, subd. (h)(2).

11. Coordination Standard:

The process coordinated activities to avoid stakeholder conflicts and take advantage of efficiencies – CWC, Sec. 10541, subd. (e)(13).

12. Climate Change:

Evaluate the IRWM region's water management systems' vulnerabilities and adaptability to climate change – CWC, Sect. 10541, subd. (e)(10)

If not covered under the Project Review Standard, please add:

Consider ghg emissions from programs and projects – CWC, Sec. 10541, subd. (e)(9).

---

**Attachment 2: Merely Administrative Items**

Governance Standard

The name of the RMG responsible for implementation of the IRWMP

Publish NOI to prepare the plan/adopt the plan

Adopt the plan in a public meeting

Project Review Standard

Address if project proponents have or will adopt the plan.